

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2687 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHUSHALBHAI JETHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/07/96

ORAL JUDGEMENT

The petitioner Khushalbhai Jethabhai Parmar has challenged the legality and validity of the order of his detention dated 14.2.1996 passed under section 3(1) of the Gujarat Prevention of Anti Social Activities Act (Hereinafter referred to as the 'PASA Act") by the Police Commissioner, Vadodara City (hereinafter referred to as the 'detaining authority') in this petition under Article

In the grounds of detention supplied to the detenu, there are two prohibition cases registered against the detenu, vide CR No. 230/94 pending in the court, while CR No. 495/95 is at the investigation stage, are relied on by the detaining authority. Besides these cases, a further reliance is placed by the detaining authority on the statements of three witnesses recorded on 22.1.1996 and 25.1.1996, wherein the witnesses have alleged the anti social and nefarious activities of the detenu of the incidents happened on 7.1.1996, 13.1.1996 and 18.1.1996. Considering this material the detaining authority has come to the conclusion that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is required to be allowed on the first submission of Mr. Prajapati that there is a delay in passing the order of detention. As stated above, the second offence under the Bombay Prohibition Act is registered at Chhani police station vide CR No. 495/95 on 14.10.1995 and the detenu was also arrested on the same day and released on bail on 15.10.1995. After the detenu was released on bail, the concerned Police Officer has recorded the statements on 22.1.1996 and 25.1.1996 and ultimately the order of detention was passed on 14.2.1996. Thus, there is a delay of four months from the date of the registration of the last offence. In *Pradeep Nilkanth Paturkar vs. S. Ramamuthi*, AIR 1994 SC p.656 the facts before the Supreme Court were that the detention order was passed after five months and eight days from the date of the registration of the last case and more than four months from the submission of the proposal and statements of witnesses were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him. These statements were very much referred to in the grounds of detention and relied upon by the detaining authority alongwith the registration of the cases under the Act. Under such circumstances, the Supreme Court held that the continuous detention is illegal on the ground of delay in passing the detention order. In this case there is a question of delay of four months from the registration of the last offence and the statements of the witnesses

obtained after the was bailed in the last case. In view of this, the order of detention is quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 14.2.1996 is quashed and set aside. The detenu Khushalbhai Jethabhai Parmar is directed to be set at liberty, if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.
